

In the High Court of Judicature at Madras

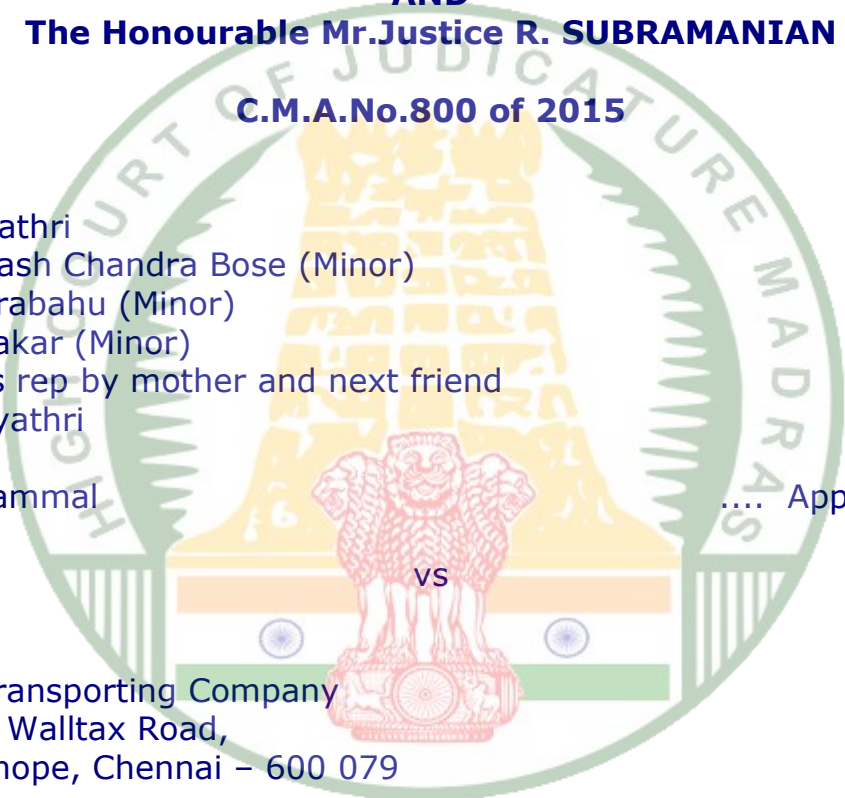
Dated : 03.10.2018

Coram

**The Honourable Mr.Justice K.K. SASIDHARAN
AND**

The Honourable Mr.Justice R. SUBRAMANIAN

C.M.A.No.800 of 2015

- 
- 1.G. Gayathri
2.G. Subash Chandra Bose (Minor)
3.G. Veerabahu (Minor)
4.G. Thilakar (Minor)
Minors rep by mother and next friend
G. Gayathri
5.P. Periammal Appellants

- 1.G&M Transporting Company
No.19, Walltax Road,
Kondithope, Chennai – 600 079

(was set exparte in the trial Court)

2. Oriental Insurance Co Ltd.,
Motor Third Party Claims – HUB,
No.216, Prakasam Salai, Broadway,
Chennai – 600 118.

... Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of
the Motor Vehicles Act, against the judgment and decree in MACTOP

No.8200 of 2013 dated 07.01.2015 on the file of Motor Accidents Claims Tribunal, (II Court of Small Causes), Chennai.

For Appellants : Ms.P.T. Salim Fathima

R.1 : Ex-parte

R.2 : Mr.R. Mohan Babu for
Mr.N. Vijayaraghavan

JUDGMENT

(Judgment of the Court was delivered by R. SUBRAMANIAN, J.)

The claimants, who are the wife, minor children and mother of one P.Ganesan, who died in a motor accident that occurred on 27.10.2013, are the appellants in this appeal, challenging the award passed by the Motor Accidents Claims Tribunal, (II Court of Small Causes), Chennai in MACTOP No.8200 of 2013 dated 07.01.2015.

2. According to the claimants, on 27.10.2013, while the deceased was standing on the western side of the Chennai-Madurai National highway, on the northern side of Manapparai Kutt Road near Kodambalur, Viralimalai Taluk, a tanker lorry, bearing Registration No.TN 04 AB 4395 came from south to north direction, on the National

Highway driven in a very high speed and rash and negligent manner. The driver lost control and ran over the Kutt road platform and dashed against the said Ganesan resulting in his instantaneous death. The claimants also contended that the deceased was working in Tamil Nadu Home Guard apart from working as an agricultural labourer earning a sum of Rs.22,000/- per month and claimed a compensation of Rs.45,00,000/-.

3. The claim petition was resisted by the second respondent Insurance Company contending that there was no negligence on the part of the lorry driver and the accident occurred since the deceased attempted to cross the road without noticing the lorry. Hence, the Appellant Insurance Company is not liable to pay the compensation.

4. In order to prove their claim, the claimants examined P.W.1 and P.W.2 and Exs.P.1 to 6 were marked. No oral or documentary evidence was let in on the side of the respondents.

5. The Tribunal, after considering the oral and documentary evidence adduced before it, came to the conclusion that the accident was caused due to rash and negligent driving of the driver of the first

respondent's lorry, insured with the second respondent Insurance Company by relying upon Ex.P.1 First Information Report and the oral evidence of P.W.2, who was an eyewitness. Accordingly, the Tribunal fixed the entire liability on the second respondent Insurance Company.

6. Since the appeal is by the claimants the only question to be decided is the correctness of quantum of compensation, we are not dealing with the other aspects of the award passed by the Tribunal.

7. The Tribunal took the monthly notional income of the deceased as Rs.7,000/- and by adding 50% towards future prospects, fixed the income of the deceased as Rs.10,500/-. After deducting 1/4 towards personal expenses (10,500-2,525) arrived Rs.7,875/- as loss of contribution by the deceased to his family. The Tribunal, based on the age of the deceased, namely, 36 years, applied the multiplier of "15" and calculated the loss of dependency at Rs.14,17,500/- (7,875 x 12 x 15)/-

8. Further, the Tribunal awarded a sum of Rs.25,000/- towards funeral expenses; Rs.1,00,000/- towards loss of love and affection (Rs.25,000 x 4) and Rs.1,00,000/- towards loss of

consortium and thus, the total award worked out to Rs.16,42,500/- with interest at 7.5% p.a. from the date of petition till the date of deposit. The break up of the details of the compensation awarded by the Tribunal are as follows:

Loss of dependency	:	Rs.14,17,500
Loss of loss of love and affection	:	Rs. 1,00,000
Funeral expenses	:	Rs. 25,000
Loss of Consortium	:	Rs. 1,00,000

Total		Rs.16,42,500

Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants have filed the appeal.

9. We have heard Ms.T. Salim Fathima, learned counsel for the claimants and Mr.R. Mohan Babu, learned counsel for the second respondent Insurance Company.

10. Ms.T. Salim Fathima, learned counsel for the claimants would contend that the Tribunal is not right in fixing the monthly notional income as Rs.7,000/-, more so, when the accident had occurred in the year 2013 and the amounts awarded under the conventional heads are also too low.

11. Per contra, Mr.R. Mohan Babu learned counsel appearing for the Insurance Company would contend that in the absence of any documentary evidence regarding the income of the deceased, the Tribunal was justified in taking the monthly income as Rs.7,000/-.

12. We have considered the rival submissions made on either side and perused the materials available on record.

13. The accident had occurred on 27.10.2013. Considering the date of the accident as well as the age of the deceased i.e, 36 years, we are of the opinion that the deceased would have earned atleast Rs.300/- per day and the monthly income would be Rs.9,000/- per month. Considering the guidelines suggested by Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and other***, reported in **2018 (1) Law Weekly 331**, we add 40% towards future prospects thus the monthly income would be Rs.12,600/-. The deceased left behind his wife, three children and his mother. Therefore, after deducting $\frac{1}{4}$ towards personal expenses, loss of income would be Rs.9,450/- (Rs.12,600-3,150). Since the deceased was aged at 36 years at the time of accident by applying the multiplier

"15" the loss of dependency would be Rs.17,01,000/- (Rs.9,450 x 12 x 15). We reduce the amount awarded towards loss of consortium to Rs.40,000/- from Rs.1,00,000/- and award Rs.1,60,000/- (Rs.40,000/- each to the minor appellants 2 to 4 and mother of the deceased) towards loss of love and affection . We reduce the amount awarded towards funeral expenses to Rs.15,000/- from Rs.25000/- and award a sum of Rs.15,000/- towards loss of estate. Thus, the total compensation works out to Rs.19,31,000/-.

14. The details of the modified compensation as per the above discussion is as under:-

Loss of dependency	: Rs.17,01,000
Loss of consortium	: Rs. 40,000
Loss of estate	: Rs. 15,000
Loss of love and affection	: Rs. 1,60,000
Funeral expenses	: Rs. 15,000

	Rs. 19,31,000

15. In fine, the Civil Miscellaneous appeal is partly allowed and the award of the Tribunal is modified to Rs.19,31,000/- (Rupees Nineteen lakh thirty one thousand only), as against the compensation of Rs.16,42,000/- awarded by the Tribunal, with interest at 7.5% from the date of petition till the date of deposit.

16. The Insurance Company is directed to deposit the amount as modified by us within a period of six weeks from the date of receipt of a copy of this judgment. The apportionment between the claimants 1 to 5 is as follows:

(i) The first Appellant-wife is entitled to Rs.6,00,000/- with proportionate interest and entire costs.

(ii) The Appellants 2 to 4/ children of the deceased are entitled to Rs.4,00,000/-each with proportionate interest.

(iii) The fifth Appellant/mother of the deceased is entitled to Rs.1,31,000/- with proportionate interest.

17. On such deposit, the 1st claimant/wife and the fifth Appellant/mother of the deceased are entitled to withdraw their respective shares by making necessary application before the Tribunal. The shares of the claimants 2 to 4/minor children of the

deceased are directed to be deposited in any one of the nationalised banks till they attain majority and the 1st claimant/their mother is permitted to withdraw the accrued interest thereon, once in three months. There will be no order as to costs in this appeal.

(K.K.S.J.,)

(R.S.M.J.,)

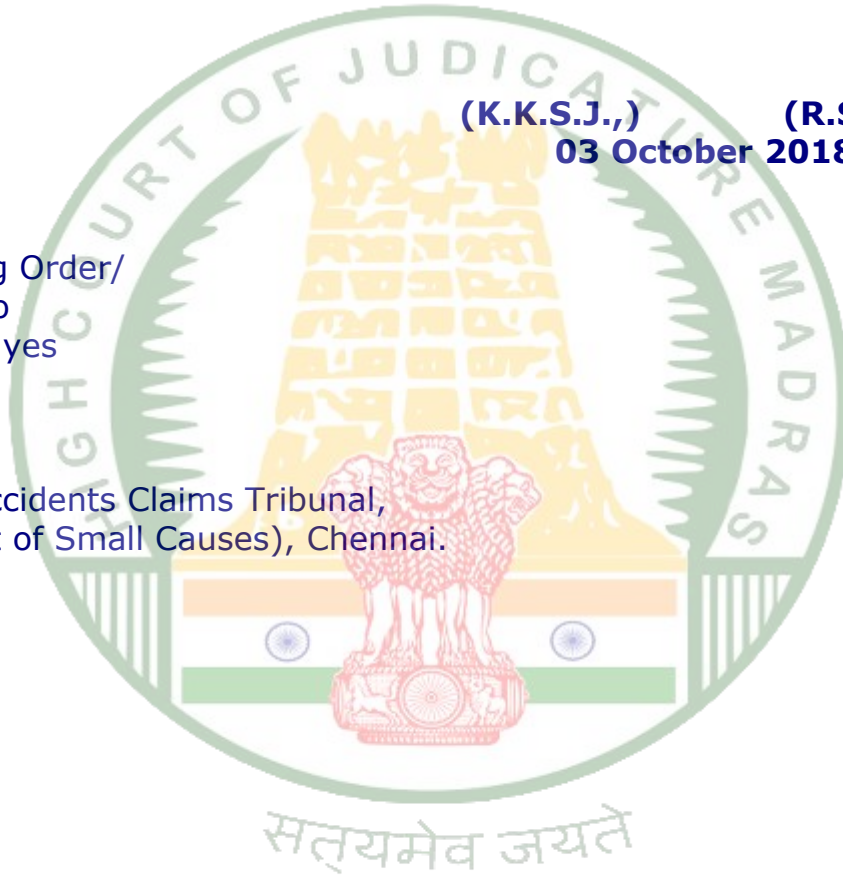
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Speaking Order/
Index:No
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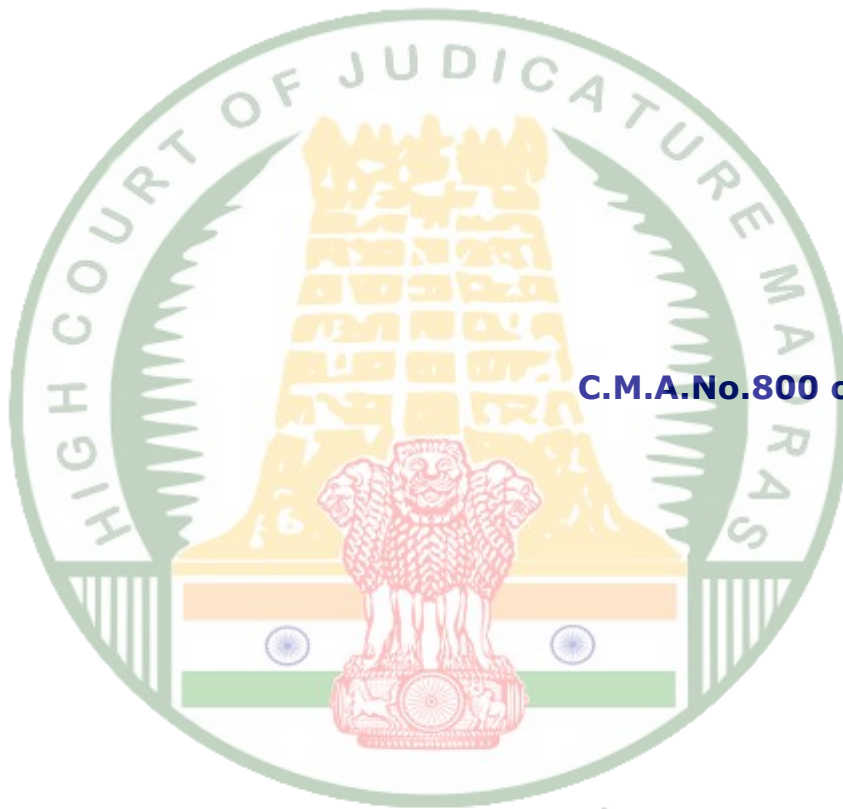
Motor Accidents Claims Tribunal,
(II Court of Small Causes), Chennai.



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**K.K. SASIDHARAN,J.,
and
R. SUBRAMANIAN,J.,**

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